

APRIL 2025



INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL



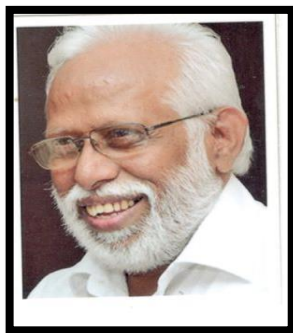
**THE INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA**



OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll there under insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just, and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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CASEBOOK

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Professional,

Greetings to you from all of us in Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI). Monthly Journal is one of the publications regularly published by the Publications Division of IPA-ICMAI. This journal seeks to carry interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring and rejuvenation and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous court rulings from various courts apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

Professional development happens through continuous professional education including updates on changes in the code, relevant laws and regulations and also new case laws. The equally important side of professional development is expression of a professional's knowledge and experience and competent sharing with fellow professionals. The professional strength we gain and the satisfaction from the intellectual exercise in working for and preparing an opinion/ article shall drive us to be active participants in professional development activities. IPA-ICMAI looks to continually expand the horizons of knowledge and skillsets for IPs that would also help them professionally. We organised a 5-day certification program on IBC in association with National Institute of Banking Studies and Corporate Management in last week of March'25 that saw a large participation of practising senior bankers involved in stressed assets management.

Enthused by the excellent response to the 6-day hybrid program 'Mediation Cohort', a certification program on mediation in November 2024, the 2nd cohort was also organised, with the in-person component arranged in Hyderabad this time in April 2025. The panel discussion during the validation session of the cohort saw a very interesting and forward-looking interaction with the very knowledgeable speakers on the panel. We at IPA-ICMAI look forward to organising more of such in-person events at different locations that well serve our mandate – facilitate continuous professional development of IPs and development of the profession of insolvency and bankruptcy.

I welcome your comments, observations and critique on the published articles in this journal. Your response will contribute to better understanding of the issues in the articles and also better appreciation of different perspectives. I welcome you to contribute to your updates that would help our fellow IPs and opinions from your experiences that all of us can benefit from. Such responses will also be published in the journal in future to generate a healthy discussion and as also an expression of the appreciation of the author.

Your rejoinder/ response/ feedback may be sent to publication@ipaicmai.in.

I wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director



PROFESSIONAL DEVELOPMENT INITIATIVES

EVENTS CONDUCTED

APRIL 2025

DATE	EVENTS CONDUCTED
April 5 th 2025	Workshop on Understanding the Waterfall Mechanism (Section 53 of IBC, 2016) was held on April 5th, 2025.
April 11 th 2025	Workshop on "Role & Responsibilities of Authorized Representatives under IBC, 2016." was successfully held on April 11th, 2025. The program was highly appreciated for its insightful discussions and expert sessions, providing valuable knowledge to the participants.
April 12 th -19 th 2025	The IPA-ICMAI, in association with Missing Bridge, successfully hosted the Mediation Cohort: Become A Certified Mediator with Comprehensive Industry Focus April 12th-19th, 2025, a comprehensive program empowering professionals to become certified mediators.
March 14 th -20 th , 2025	The Pre-Registration Educational Course was conducted by our expert faculties from 14 th -20 th April 2025, who shared their knowledge, enriching experiences, practical aspects, and guidance to function as an effective and efficient Insolvency Professional (IP).
April 26 th -27 th 2025	A two-day Online Learning Session on "Unlocking the Power of Commercial Wisdom, Effective Decision-Making by CoC"." was held from 26th to 27th April 2025.
April 30 th 2025	The IPA-ICMAI, in association with the Institute of Cost Accountants of India, Chandigarh Chapter (Panchkula & Mohali), successfully organized a Workshop for Insolvency Professionals on 'Challenges Faced by Insolvency Professionals in Implementation of Resolution Plans' on April 30 th , 2025.



IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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Newsletter which
keeps the
Insolvency
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updated with the
news on
Insolvency and
Bankruptcy Code*

ARTICLES



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

MR. RANJEET KUMAR VERMA Insolvency Professional

SYNOPSIS ON VOLUNTARY LIQUIDATION

Voluntary liquidation is a process initiated by a company to wind up its affairs and dissolve its existence in a legal and orderly manner. Unlike compulsory liquidation, which is court-ordered, voluntary liquidation is initiated by the company's shareholders or creditors when the company is solvent or insolvent, respectively.

PROCESS OVERVIEW:

- Board Resolution and Special Resolution by Shareholders.
- Appointment of a Liquidator.
- Public Notice and Intimation to the Registrar.
- Settlement of Claims and Distribution of Assets.
- Final Report and Dissolution Order.

CONCLUSION:

Voluntary liquidation offers companies a strategic and legally compliant path to exit business operations. It enables a transparent and equitable distribution of assets while maintaining goodwill and avoiding prolonged litigation.

PROCESS-

1. Board Resolution and Declaration of Solvency:

The process begins with the board of directors passing a resolution recommending voluntary liquidation.¹

Directors must declare that the company has no debts or that it will be able to pay its debts in full from the proceeds of asset sales. This declaration, known as the Declaration of Solvency, is a critical document affirming the company's financial health at the time of liquidation.²

1. Appointment of Liquidator:

Following the board resolution, shareholders must appoint an insolvency professional as the liquidator.³

The liquidator assumes control of the company's assets, oversees the liquidation process, and ensures that all statutory obligations are met.⁴

2. Public Announcement:

The liquidator is required to make a public announcement within five days of their appointment.⁵

This announcement invites creditors to submit their claims within a specified period, typically 30 days, ensuring that all liabilities are accounted for during the liquidation process.⁶

3. Verification and Settlement of Claims:

The liquidator verifies the claims submitted by creditors and may admit or reject them, in whole or in part.⁷

Creditors have the right to appeal the liquidator's decision if they disagree with the outcome.

4. Realization and Distribution of Assets:

The liquidator is responsible for realizing the company's assets, which may involve selling properties, collecting receivables, and liquidating investments.☐

Proceeds from asset sales are used to settle outstanding debts. Any surplus is distributed among shareholders in accordance with their rights.

5. Regulatory Filings and Compliance:

Throughout the liquidation process, the liquidator must comply with various regulatory requirements, including filing necessary documents with the Registrar of Companies and the Insolvency and Bankruptcy Board of India (IBBI).

Maintaining transparent communication with stakeholders and adhering to statutory timelines are essential for compliance and to avoid legal complications.

6. Final Report and Dissolution:

Upon completion of the liquidation process, the liquidator prepares a final report detailing the liquidation proceedings, including asset realization and debt settlement.

This report is submitted to the Adjudicating Authority (National Company Law Tribunal) for approval.

Once the authority is satisfied, it passes an order for the dissolution of the company, officially bringing its existence to an end.

Practical Considerations:

- **Timelines:** The IBBI mandates that the voluntary liquidation process should be completed within 270 days from the liquidation commencement date. Adhering to this timeline is crucial to avoid penalties and ensure a swift dissolution.

- **Unclaimed Proceeds:** Any unclaimed dividends or undistributed proceeds must be deposited into the Corporate Voluntary Liquidation Account maintained by the IBBI. This ensures that stakeholders can claim their dues even after the company's dissolution.
- **Record Preservation:** The liquidator is required to preserve all records related to the liquidation process for a specified period. This is vital for addressing any future legal or regulatory inquiries.

Navigating the voluntary liquidation process requires meticulous planning and strict adherence to legal procedures. Engaging experienced professionals and maintaining clear communication with all stakeholders can significantly facilitate smooth and efficient liquidation.

Paragon Utility Financiers Pvt. Ltd.

Citation:

NCLT Mumbai Bench, CP No. 1822/IBC/MB/2019

Facts:

The company filed for voluntary liquidation under Section 59.

Declaration of solvency and necessary resolutions were filed.

- Held:

NCLT approved voluntary liquidation and dissolution.

Reaffirmed that a solvent company can voluntarily liquidate itself even if it has not commenced business.

M/s. United Chloro Paraffins Pvt. Ltd.

Citation:

NCLT New Delhi Bench, CP(IB)-163(ND)/2020

Facts:

- Liquidator sought dissolution after following all due process.
- ROC raised objections due to certain pending filings.

Held:

- NCLT held that non-filing of returns cannot stall dissolution if IBC process is complete.
- Directed ROC to take necessary actions post-dissolution

- Significance:

- Clarified that IBC overrides procedural lapses under Companies Act during voluntary liquidation.

3. Shree Ram Lime Products Pvt. Ltd.

Citation: NCLT Jaipur Bench, CP(IB) No. 32/JPR/2019

Facts:

- Voluntary liquidation initiated with no dues and assets realized.
- Liquidator filed the final report under Regulation 38.

Held:

- NCLT approved the dissolution, confirming compliance with all procedural steps under the Regulations.

Significance:

- Reinforced that if timelines and disclosures are met, NCLT shall approve dissolution.

CS. DR. M. GOVINDARAJAN Insolvency Professional

The Insolvency and Bankruptcy Code, 2016 ('Act' for short) provides the procedure for the initiation of corporate insolvency resolution process ('CIRP' for short) against the corporate debtor by a financial creditor or an operational creditor or by the corporate applicant itself. On receipt of the application, the Adjudicating Authority (National Company Law Tribunal) will admit the application, if it is satisfied that the application is perfect in all aspects. The Adjudicating Authority will appoint an Interim Resolution Professional ('IRP' for short) for further processing of CIRP.

If any person is aggrieved by the order of the Adjudicating Authority, he can file appeal before the National Company Law Appellate Tribunal ('NCLAT' for short). Rule 11 of the National Company Law Tribunal Rules, 2016 provides that nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

Whether the Adjudicating Authority can recall its own orders under Rule 11? There is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent powers of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by NCLT when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served, or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be

other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court.

In '**Shristi Infrastructure Development Corporation Limited v. Housing and Urban Development Corporation Limited, Vikram Kumar, RP of Sarga Udaipur Hotels & Resorts Private Limited (formerly known as Shristi Udaipur Hotels & Resorts Private Limited)**' – 2025 (3) TMI 1192 – NCLAT, Principal Bench, New Delhi (LB), Sarga Udaipur Hotels & Resorts Private Limited (corporate debtor) entered into a loan agreement with Housing and Urban Development Corporation Limited (HUDCO) for an amount of Rs.6907.92 Lakhs. HUDCO appointed Dr. Alok Kumar Joshi as its nominee director of the corporate debtor.

The corporate debtor filed an application before the Adjudicating Authority under Section 10 of the Code for the initiation of corporate insolvency resolution process. The application was admitted by the Adjudicating Authority on 29.04.2022. HUDCO filed its claim to the IRP to the tune of Rs.23.82 crore. The IRP admitted the claim for Rs.20.60 crores.

The Committee of Creditors ('CoC' for short) was constituted by the IRP. The HUDCO claimed that it was also entitled to be a member of the CoC. The IRP refused the same on the ground that HUDCO is a related party to the corporate debtor under section 5(24) of the Code. Therefore, HUDCO filed an application before the Adjudicating Authority with a prayer to include it as a member of the CoC. The said application was allowed by the Adjudicating Authority on **30.08.2023**. The Adjudicating Authority held that HUDCO is not a related party of the corporate debtor and deserved to be added

as a member in the CoC. The Adjudicating Authority directed the IRP to reconstitute the CoC. The IRP reconstituted the CoC including HUDCO as a member of CoC.

Shristi Infrastructure Development Corporation Limited ('appellant' for reference) filed an appeal before the NCLAT against the order of the Adjudicating Authority. However, the said appeal was withdrawn by the appellant with the intent to file a separate application before the Adjudicating Authority. The appellant filed an application before the Adjudicating Authority for recall of its order dated 30.08.2023. The appellant prayed for the following in its application before the Adjudicating Authority-

- To invoke its inherent powers of the Adjudicating Authority as vested under Rule 11 of National Company Law Tribunal Rules, 2016, and re-call the Order dated 30.08.2023 passed in I.A.(IBC) No. 514/KB/2022 arising out of C.P.(IB) No. 202/KB/2021 and direct exclusion of the respondent No. 1 (HUDCO) from the CoC of the Corporate Debtor;
- To pass/issue necessary order and/or orders directing the IRP to restart CIRP of the Corporate Debtor from the stage of constitution of CoC after declaring all resolutions and/or decisions taken by the CoC of the Corporate Debtor, which involved respondent No. 1 as the lead member of the CoC despite it being a related party. as null and void and consequently all such resolutions and/or decisions taken in such CoC's meeting involving Respondent No. 1 should be immediately set aside by this Hon'ble Tribunal;
- To pass/issue necessary order and/or orders staying any further CoC's meeting and/ or staying all further functioning of the CoC in respect of the Corporate Debtor and/or staying the passing of any resolution in any CoCs' meeting of the Corporate Debtor and/or taking any further decision by the CoC of the Corporate Debtor till the adjudication of this instant application;

- To pass *ad-interim* orders in terms of prayer in the previous para and particularly *ad-interim* orders restraining respondent No. 1 from exercising its voting rights in any CoCs' meeting of the Corporate Debtor till the adjudication of this instant application;
- To issue appropriate direction to the Interim Resolution Professional/ Respondent No. 2 to include the Applicant as a member of the Committee of Creditors of the Corporate Debtor.

HUDCO filed a reply to the application. The Adjudicating Authority heard the parties and rejected the application filed by the appellant. Therefore, the appellant filed the present appeal before NCLAT.

The appellant submitted the following before NCLAT-

- HUDCO in Joint Venture with Shristi Infrastructure Development Corporation Limited (SIDCL) has incorporated Srishti Urban Infrastructure Development Ltd. (SUIDL). In SUIDL, SIDCL has 60% shareholding and HUDCO has 40% shareholding.
- The SUIDL has promoted the Corporate Debtor, hence, HUDCO has control over the Corporate Debtor through SUIDL. HUDCO has a Nominee Director in the Board of the Corporate Debtor to exercise influences.
- While hearing the application filed by the HUDCO being I.A. No.514/KB/2022, HUDCO did not disclose the Annual Report of the HUDCO which has described the Corporate Debtor as its subsidiary company.
- The Annual Report of the HUDCO being suppressed from the Adjudicating Authority, order dated 30.08.2023 was obtained by playing fraud on the Court, hence, said order deserve to be recalled.

- The Adjudicating Authority committed error in rejecting I.A. filed by the Appellant for recall of the order.

HUDCO submitted the following before the NCLAT-

- The issue as to whether HUDCO is a related party of the Corporate Debtor or not has been examined threadbare by the Adjudicating Authority in I.A. No.514/KB/2022 in detail.
- The Adjudicating Authority had after considering all submissions made on behalf of the IRP for treating the HUDCO as related party has rejected the submission and had held that HUDCO is not a related party of the Corporate Debtor.
- The application filed by the appellant, who is promoter of the corporate debtor is nothing but an application to review the judgment dated 30.08.2023 which order was passed after considering all submission and all materials on the record.
- No grounds have been made out to recall order dated 30.08.2023 and the Adjudicating Authority has rightly rejected the application.
- The Annual Report of HUDCO on which reliance has been placed by the appellant has also been extracted by the Adjudicating Authority in the impugned order which in no manner indicate that HUDCO has accepted the Corporate Debtor as related party.

The NCLAT heard the submissions of the parties to the present appeal. The NCLAT considered the entire facts of the case and also analysed the documents on record. The NCLAT observed that the Adjudicating Authority in the impugned order has noted

the grounds for recall of judgment passed by Tribunal and has referred to the judgment of NCLAT in '*Union Bank of India v. Dinkar T. Venkatasubramanian and others*', the NCLAT discussed in detail about the review of power and review of recall. The NCLAT considered the submissions of the appellant that HUDCO obtained the impugned order by suppression of fact. The Adjudicating Authority, after considering the contentions of the appellant and the resolution professional, rejected the contentions of the IRP that HUDCO is a related party to the corporate debtor. The appellant being aware of the limited scope of recall has pleaded that the order was obtained by HUDCO by suppressing relevant facts including Annual Report which reflect the Corporate Debtor as related party.

In respect of the suppression of relevant documents, NCLAT was of the view that the same cannot be accepted since all the documents which were relevant for determination of issues raised in I.A. No.514/KB/2022 were filed and relied by both the parties i.e., HUDCO and IRP. The Adjudicating Authority also examined the 51st Annual Report of HUDCO. In the said Annual Report 'Related Party Disclosure' in Item 32 Clause (a) does not contain name of corporate debtor whereas name of SUIDL is mentioned at Serial No.1. The name of 'Sarga Udaipur Hotel & Resorts Private Limited.' is mentioned as subsidiary of Associate Company which action cannot lead to any admission that Corporate Debtor is related party of HUDCO.

The NCLAT fully concurred with the views expressed by the Adjudicating Authority while rejecting I.A. No.693/KB/2024. There is no merit in the appeal. Since there is no merit in the appeal the NCLAT dismissed the appeal.

MR. DENDUKURI ZITENDRA RAO Insolvency Professional

I intend to start with a declaration that I am determined to not to use Chat GPT to improve the English vocabulary of this article. The reason is simple. I wanted to unfurl my heart and bring my emotions in my own words. Having enrolled as a registered Insolvency Professional in March 2020; COVID took the first 2 years to its credit with out any on hand experience of the IBC, 2016. Having handled one file of Corporate Insolvency Resolution Process (CIRP) and couple of cases of Individual Insolvency Resolution Proceedings; I came to the conclusion that I can reduce my thoughts into a write up that deserve the tittle that I have accorded

The Driver

In the lone Section 9 case of CIRP handled by me I had to submit a Memo to Honourable Adjudicating authority highlighting an important aspect which goes as *"It is submitted that the members of COC paid the Resolution Professional Fee of Rs.X falling to the share of A Bank and Rs. Y falling to the share of B Bank. These are as per the claims raised by the Resolution Professional after **waiving off 73% of the fee fixed** with an objective to settle the issue amicably"*. Thus, the point that I am driving is that an RP is entitled for the **motivation** to pursue the profession. In the other proceedings under Sec.100 of IBC, 2016; the PUNYA KALAM of 180 days passed away without the Personal Guarantor (PG) coming to the negotiating table with the Committee of Financial Creditors. The experiences of the RP in the pursuit affirms the DOCTRINE that I am advocating – the MOTIVATION. In general parlance it is known fact that a Resolution Professional has been conferred the tittle as an **officer of the court** by the inferences of the trend setting enactment called IBC,2016. Does he or she get such treatment is the question?

The Backdrop

Before coming to certain conclusive statements - let me narrate the facts of the case. In an appointment as Interim Resolution Professional effected by Hon.NCLT; the Operational Creditor funded Rs.1 lakh as against Rs.2 lakhs ordered for to meet the CIRP costs that commenced in October 2022. In due course the Committee of Creditors (CoC) was constituted and the status of appointment has been upgraded to Resolution Professional (RP) with a respectable remuneration which is in line with the minimum fee prescribed by the Regulator i.e., IBBI. The custodial formalities were also complied with by the RP. In the meantime, the Corporate Debtor challenged the proceedings at the Appellate Authority and obtained stay in November 2022. The orders of National Company Law Appellate Tribunal (NCLAT) scrolled down the wordings ***"In the meantime, further proceeding shall remain stayed"***. The order does not talk about the custody of CD. Thereafter NCLAT dispose off the petition in July 2023 that is after a time span of **almost 7 months** and set aside the original orders of Adjudicating Authority. Aptly the orders of Honorable NCLAT did talk about the protection to the rights of RP as *"At this stage, Counsel for the RP has submitted that he may be permitted to file an appropriate Application before the Tribunal for claiming the cost incurred by the RP during this proceeding. We order accordingly"*. IBC, 2016 concludes without any ambiguity that **Costs include the Fee** as well. In the meantime, RP has been accomplishing all the designated, scheduled and other fallout tasks such as filing the progress reports, attending to the adjournments of NCLAT and even attended to the police station also in connection with a development concerned with CD since the RP is in continuous custody of the CD. Once NCLAT had set aside the CIRP proceedings - in all sincerity the RP has handed over the

Factory keys to the CD and filed the closure petition. The same was taken on record. In the process Honorable NCLT is kind enough to entertain the RP's plea for settlement of fee and other Insolvency Resolution Process costs. The legal counsel of one of the member of the CoC brought to the attention of the Honorable NCLT that in one case supreme court did not allow Fee to RP during the period of stay. The counter filed says that "*It is settled law that from the date of stay till the date of the order setting aside the final order, the IRP/RP is not entitled to any fee*". My legal friend of that Institution was not concerned to co-relate the facts of the case. The relevant case particulars also were not given in the counter.

Core Issue

Learned members of the Committee of Creditors were also aware of the fact that the regulator has prescribed the minimum fee to be paid to the Resolution Professional. Still they were not willing to pay the Monthly Fee fixed for the Resolution Professional in the First CoC Meet. Their reasoning is the stay proceedings by the NCLAT. The matter reached Hon.NCLT which has been advising for settlement of the issue between CoC and the RP. Perhaps, the objecting member of CoC was of the view that the RP was not occupied with during the period of stay. The fact of submission of periodical progress reports and attending to the police station at times of a crisis are not been given any consideration by the member institution.

Statutory Stand

- Section 25 (1) carries the terms "It shall be the duty of the resolution professional to PRESERVE and PROTECT the assets"
- Section 25 (2) (a) talks about the RPs Role with respect to custody and control of all the assets of the corporate debtor
- Section 5(13)(b) talks "the fees payable to any person acting as a resolution professional" forms part of "insolvency resolution process costs"

- Regulation 34B(5) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 strengthens the point that the Fee to be paid to Interim Resolution Professional and Resolution Professional shall be included in the insolvency resolution process costs.
- Clause 2 (d) of Schedule II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 talks about the period for which the fee has to be paid saying that "The minimum fixed fee shall be applicable for the period from appointment as interim resolution professional or resolution professional till the time of order for CLOSURE of Corporate Insolvency Resolution Process"

Experience is contradicting

My claim was only around Rs. 8 lakhs. The attitude of the institution really pained me. I am unable to understand as to without any consideration why should I continue to be the custodian of the CD. As cited in the early part of the write up – I had to settle the issue for **27%** of the claim lodged. In spite of such powerful provisions in the IBC, 2016 ; I am to reconcile with the institutions only to put a full stop to the ongoing inconvenience to the judiciary and to wrap up the pending agenda of the CIRP.

Claim for Costs

I am aware of the doctrine that runs as *No body should enrich at the cost of Others*. It is my turn to digest a bit of unusual process of due diligence stipulation by one of the members of Committee of Financial Creditors. It is the case of Individual Insolvency Resolution Process (IIRP) and even the minimum fee criterion is not fixed for by the IBBI specifically for IIRPs. The Financial Creditors are in no mood to adopt the Schedule II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. I agree with the argument that it is matter of consensus between the RP and the Institution involved when it comes to the Fee issue. But the bitter side of the experience is with reference to the Out-of-

Pocket Expenses (OPE) claim. In normal trends the whole spent for the entire IIRP period of say 180 days or so will be around maximum of Rs.50K which includes Paper advertisement costs as well. The other burn would be on account of Conveyance, Stationery, Postage, Photocopy expenses, Notary Charges and Office administration charges if any etc.. As cited earlier – it will not be an avenue for making money for the matured professionals. But when an Institution demanded for **line-item wise** expenses; it is as if I have to furnish every single item such as Rs.30/- of postage or Rs.20/- of Parking Fee or Rs.20/- of Water Bottle or Rs.5/- of Photocopying expenses. I felt that there should be an amicable understanding in this regard.

फ्रीलिंग्स समझो ना (Understand the Feelings)

Yes – The sub tittle is apt for the concluding paras of this write-up. In the first instance I felt very much embarrassed to argue before the judiciary for the cause of **self than the IBC,2016**. I am unable to appreciate the thought process of the institution that reminds me the time and motion study based wage mechanism of FW Taylor times even for the CIRP/IIRP assignments under IBC, 2016. As such the responsibility is fully been assumed by the RP who helps the institutions to clean up their stinky debts in a systematic manner by contributing his might to maximise the recoveries. The time and remuneration aspects cannot be adjudged in a **linear** mode. The stakeholders of CoC should realise that the remuneration is been paid for the **responsibility undertaken** and quantification of the same is tough task and un just. There is no scientific instrument that can ascertain the quantitative aspects of the **thought process**. Interestingly IBC 2016 also makes the Fee as a part of Insolvency Resolution process costs implying the dynamic principle that it is not an “Office of Profit” for the RP but an obligation of social cause.

Few Suggestions

It is time that IBBI comes with much more **detailed guidelines** in respect of

compensation to the RP. The broader segments can be that of Insolvency of Corporates, Insolvency of Individuals, Stay Period aspects etc.. Similarly, whenever the difference of opinion emerges between the RP and the CoC; the lord ship can step in to adjudicate the “**Question of Reasonability**”. Similarly in regard to OPE claims that exceed a substantial amount of Rs.2K can be mandated to be substantiated with the necessary supporting documents. Secondly the tracking of line-item wise burn is bit inconvenient to the RP particularly the consumption of office infrastructure of the RP. Hence certain allowances such as secretarial expenses and office maintenance expenses can come in the said guidelines as a lump sum amount.

If not

In my other profession as a Cost Accountant in Practice - I keep hearing in the conventional Industry that the skilled work force is gradually diminishing and this trend is giving the Factories a big concern at productivity. Similar trend may emerge in the profession of Insolvency as well. It is cited that IBBI the regulator, NCLT the Adjudicating Authority, the Information Utility (IU) and the Insolvency Professional (IP) are the four pillars of IBC,2016. Can we afford to have one of the pillars of a building becoming weak ? It will be reality with regard to Insolvency Professional if the concerns are not addressed.

In Conclusion

I only wish that some of the aspects discussed in this article may at least be taken up for Research studies. Thereby the findings of the studies can occupy space in the future enactments or guidelines giving little more **motivation** to the professionals practicing the Insolvency Laws. Thus, the Insolvency Professionals (IP) will get the required ammunition to sustain and safe guard the spirit of IBC,2016.

CASE LAWS



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 5(21) - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

Comet Performance Chemicals (P.) Ltd. v. Aarvee Denims and Exports Ltd. - [2025] 171 taxmann.com 74 (NCLAT- New Delhi)

No interest can be charged against supply of goods and services for delayed payments until and unless there is an express agreement between parties and in absence of such agreement, interest component could not be considered part of operational debt and, therefore, application filed under section 9 was not maintainable as default amount was below statutory threshold of rupees one crore if interest was not included in it.

The appellant/operational creditor was engaged in business of manufacturing and selling construction chemicals, water treatment chemicals and textile chemicals. The corporate debtor approached appellant for supply of goods which included various types of chemicals for their textile business. The appellant supplied goods and raised invoices. All invoices received by the corporate debtor contained clause for interest amount on delayed payment after due date. Due to non-payment of outstanding amount, the appellant issued demand notice. The corporate debtor vide letter replied to demand notice in which the corporate debtor failed to justify reasons for default. Appellant filed application for

initiating corporate insolvency resolution process under section 9 against corporate debtor, however, Adjudicating Authority dismissed said application on ground that debt claimed was below threshold limit specified under section 4 and interest amount was disputed.

Held that no interest can be charged against supply of goods and services for delayed payments until and unless there is an express agreement between parties. Since interest was recoverable only when expressly agreed upon by parties and in absence of such agreement, interest component could not be considered part of operational debt, application under section 9 was not maintainable as default amount was below statutory threshold of rupees one crore if interest was not included in it. Also, since appellant filed a commercial suit for same claim prior to issuance of demand notice and corporate debtor in his reply to demand notice had clearly brought out existence of pre-existing dispute as well as pendency of said suit, such a petition could not be entertained under section 8 and, therefore, appeal was not maintainable.

Case Review: Comet Performance Chemicals Private Limited v Aarvee Denims and Exports Ltd. [2025] 170 taxmann.com 851 (NCLT -New Delhi), affirmed

SECTION 25 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

Sumati Suresh Hegde v. Anand Sonbhadra [2025] 171 taxmann.com 78 (NCLAT- New Delhi)

Where RP had filed an application for eviction of appellants-tenants of corporate debtor under garb of provisions of IBC Code, since tenancy would continue until it was changed by a contract or by operation of law and there had been no such change of tenancy rights and suit for eviction was pending at time of initiation of CIRP, impugned order passed by NCLT directing eviction of appellants was to

be set aside.

CIRP was initiated against the corporate debtor and, RP was appointed. RP filed an application before NCLT to take control and possession of property in question by evicting appellants-tenants. NCLT allowed said application. Appellants challenged NCLT's order. It was noted that suit for eviction was pending at time of initiation of CIRP and RP having been appointed as such did not pursue suit for eviction and rather filed an application under section 60(5) read with section 25(2)(a) before the Tribunal.

Held that the law which was to operate in respect of termination of tenancy were provisions of the Maharashtra Rent Control Act and not the Code. Since there had been no change of tenancy rights of appellants by way of a contract, RP could not have short circuited route of eviction of the appellants under garb of provisions of the Code, thus,

impugned order passed by NCLT directing eviction of appellants was to be set aside.

Case Review: Anand Sonbhadra Resolution Professional of Champalalji Finance (P.) Ltd. v. Mrs. Sumati. Suresh Hegde [2025] 170 taxmann.com 853 (NCLT - Mum.), reversed.

SECTION 5(24A) - CORPORATE INSOLVENCY RESOLUTION PROCESS – RELATED PARTY, IN RELATION TO AN INDIVIDUAL

Anoop Kumar Srivastava v. Neerav Bhatnagar [2025] 171 taxmann.com 286 (NCLAT- New Delhi)

Where there was incidence of infringement of Code of Conduct of Insolvency Professionals by IRP of corporate debtor for not having disclosed their relationships or potential conflicts of interest in appointment of consultants, IRP and consultants appointed by him were to be removed.

The corporate debtor (real estate company) was admitted into CIRP. Thereafter, an MoU was signed between the applicant and Homebuyers of the corporate debtor in terms of which the applicant was to act as strategic financier and project partner in reverse CIRP and IRP (Interim Resolution Professional) was to ensure that construction was carried out as per MoU. As a key financier, the applicant had a definite stake in manner of appointment of Project Management Consultant (PMC) and Legal Consultant (LC). However, consent of applicant had not been obtained by IRP before appointment of PMC and LC. IRP merely informed the applicant post their

appointment which could not be viewed as their concurrence after consultation. Further, there were incidences of relationship between IRP, PMC and LC and IRP had deliberately failed to disclose his association with PMC as well as LC. Being related parties, non-disclosure of such association or potential conflicts of interest in appointment of consultants amounted to violation of Code of Conduct for Insolvency Professionals as well as the IBBI's Circular No. IP/005/2018 dated 16.01.2018 on 'Disclosures by Insolvency Professionals and other Professionals appointed by Insolvency Professionals conducting Resolution Processes'.

Since there was incidence of infringement of Code of Conduct of Insolvency Professionals by IRP for not having disclosed their relationships or potential conflicts of interest in appointment of consultants, to prevent further abuse of process and to meet ends of justice, IRP and consultants appointed by them were to be removed, and application for replacement of IRP with another IRP was to be allowed.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

Marvel Landmarks (P.) Ltd. v. Jay Nihalani [2025] 171 taxmann.com 328 (NCLAT- New Delhi)

Where NCLT disposed of section 7 petition filed by homebuyers against corporate debtor on 4-6-2024 on ground that they did not comply with amended law setting up requisite

percentage/number of allottees to make them eligible to continue with Company Petition, since order dated 4-6-2024 was not on merits and was passed without hearing respondent allottees, NCLT had rightly recalled said order and restored section 7 petition for examination on merits.

The corporate debtor, a real estate company, entered into agreements to sale with respondents-homebuyers for purchase of residential units in a building project. Since residential units could not be constructed and possession could not be handed over on time, respondents filed a section 7 petition for initiation of CIRP against the corporate debtor. The corporate debtor raised questions on maintainability of section 7 petition on ground that respondents had failed to meet requirements laid down by 2nd proviso to section 7(1) which prescribed minimum threshold of 100 allottees or 10 per cent of total allottees in a section 7 petition. Section 7 petition was disposed of by NCLT by order dated 4-6-2024 on ground that respondents did not comply with amended law setting up

requisite percentage/number of allottees to make them eligible to continue with Company Petition. Subsequently, respondents filed an application under rule 11 of The NCLT Rules seeking recall of order disposing of section 7 petition. NCLT by impugned order recalled its earlier order and restored section 7 petition. The corporate debtor challenged said order in instant appeal contending that order dated 4-5-2024 passed by NCLT was on merits and, therefore, could not have been reheard by NCLT.

Held that order dated 4-6-2024 was not on merits and was passed without hearing respondent, NCLT had power to recall said order and restore section 7 petition for examination on merits, therefore, impugned order passed by NCLT was to be affirmed.

Case Review : Jay Nihalani v. Marvel Landmarks (P.) Ltd [2025] 171 taxmann.com 201 (NCLT - Mum.), affirmed.

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

Jagdish Prasad Sharma v. Silverline Graphics (P.) Ltd. [2025] 171 taxmann.com 368 (NCLAT- New Delhi)

Where there were many complex transactions not only between Corporate Debtor and Operational Creditor but also between their Promoters, veil of Corporate Debtor had to be pierced in such a situation and in case of pre-existing dispute between Operational Creditor, Promoters of Operational Creditor, Corporate Debtor and Promoters of Corporate Debtor, section 9 proceedings against corporate debtor could not be initiated

The operational creditor supplied printing and other allied materials to the corporate debtor and raised invoices. However, the corporate debtor had defaulted in payment

of such operational debt, thus, the operational creditor filed petition to initiate CIRP against the corporate debtor. The corporate debtor claimed that there exists a dispute between parties. According to the corporate debtor, the operational creditor and its promoters were occupying property of the corporate debtor and its promoters as a tenant and goods supplied by the operational creditors were being adjusted against rent which they were liable to pay to promoter of the corporate debtor. When they stopped paying rent, a suit was filed which was pending before the High Court. NCLT vide impugned order admitted said petition. It was noted that there were multiple transactions which were happening in purported running account maintained between parties, some of which were related to supply of goods and payment of rent for

premises occupied by the operational creditor. Some transactions were also related to payment through RTGS and without any purpose and some had been returned in cash. This indicated complex nature of transactions between the operational creditor, promoters of operational creditor, corporate debtor and promoters of the corporate debtor and could not be seen in isolation and veil of the corporate debtor had to be pierced in such a situation.

Held that there was a pre-existing dispute between promoters inter-mingled with two legal entities, therefore, section 9 proceedings initiated against the corporate debtor was to be set aside.

Case Review : Silverline Graphics (P.) Ltd. v. India Offset Printers (P.) Ltd. [2025] 171 taxmann.com 204 (NCLT - New Delhi), reversed

SECTION 12 - CORPORATE INSOLVENCY RESOLUTION PROCESS – TIME LIMIT FOR COMPLETION OF

Gemco Technologies (P.) Ltd. v. Crown Abacus IT Park Association Successful Resolution Applicant of Crown Realtech (P.) Ltd. [2025] 171 taxmann.com 410 (NCLAT- New Delhi)

Where approval of resolution plan submitted by SRA was challenged in appeal and an interim order was passed by Tribunal and issues remained sub-judice and pending consideration, order of Adjudicating Authority, excluding period during which an interim order was operating against SRA from implementation period of resolution plan was to be upheld.

CIRP was commenced against the corporate debtor and, resolution plan submitted by respondent no.1-SRA was approved. Appellants, unsuccessful resolution applicant with a suspended director, filed appeal challenging approval of resolution plan submitted by the SRA. When appeal came for hearing, the appellant prayed for an interim order. The Appellate Tribunal passed an interim order directing SRA not to

transfer any unit till next date. Said interim order continued till appeal was finally decided. After dismissal of appeal and vacation of interim order, SRA filed an application seeking exclusion of period during which interim order was operating against SRA from period of implementation of resolution plan. The Adjudicating Authority allowed said application and granted exclusion of 446 days from period of implementation of resolution plan.

Held that when approval of resolution plan was challenged in appeal, issues remained sub-judice pending consideration and an interim order was also passed by the Appellate Tribunal, there was no error in order of the Adjudicating Authority, excluding period from implementation of resolution plan, during which an interim order was operating against SRA, thus, impugned order passed by the Adjudicating Authority was to be upheld.

Case Review: Mohan Agarwal v. Crown Realtech (P.) Ltd. [2025] 171 taxmann.com 247 (NCLT - New Delhi), affirmed.

SECTION 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – APPEALS AND APPELLATE AUTHORITY

Munagala Roja Harsha Vardhini v. Vardhansmart (P.) Ltd. [2025] 171 taxmann.com 446 (NCLAT - Chennai)

Limitation period for filing appeal against order passed by Adjudicating Authority is 30 days and Appellate Tribunal has discretion to

condone delay of 15 days in filing appeal, after expiry of 30 days, but not exceeding 45 days; where appellant filed appeal after 56 days of pronouncement of order, appeal was beyond condonable period and thus, same was to be dismissed.

The appellant-financial creditor filed an appeal on 19-1-2023, seeking condonation of a 12 days delay in filing appeal. Appellant alleged that NCLT issued an order on 24-11-2022 but, the appellant received a free copy of said order on 7-12-2022 thus, limitation period for filing appeal should start from 7-12-2022. It was noted that order had been pronounced on 24-11-2022 by NCLT and when calculated from date on which instant appeal came to be filed through 'e-portal' on 19-1-2023, actual delay (after expiry of 30 days in filing an appeal) will be 26 days, totaling 56 days.

Held that appellant had not applied for a Certified Copy and had not obtained same,

on payment of, requisite fee, therefore, free cost copy of impugned order was not a 'Copy Certified'. Delay of 12 days as computed by the appellant', in her application, from date of receipt of free copy on 7-12-2022 could not be accepted and, pronouncement date' could only be date on which 'order' was pronounced by the Adjudicating Authority i.e., 24-11-2022. Limitation period for filing appeal against order passed by the Adjudicating Authority is 30 days and the Appellate Tribunal has discretion to condone delay of up to 15 days in filing appeal, after expiry of 30 days, but not exceeding 45 days. There was a delay of 26 days which was 'beyond condonable period of 45 days being outer limit', appeal filed by appellant was to be dismissed.

Case Review: Mrs. Munagala Roja Harsha Vardhini v. Vardhansmart (P.) Ltd. [2025] 171 taxmann.com 120 (NCLT - Amaravati) (para 36) affirmed.

SECTION 101 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - MORATORIUM

Anil Kumar v. Mukund Choudhary [2025] 171 taxmann.com 490 (NCLAT- New Delhi)

Where 90 days extension was granted for Personal Insolvency Resolution Process (PIRP), in view of express provisions of section 101(1) limiting Moratorium period to 180 days, no extension of Moratorium could be allowed by Adjudicating Authority or Appellate Tribunal.

An application under section 94(1) was filed by the personal guarantor and, NCLT admitted said application, declaring Interim Moratorium in terms of section 96 and Resolution Professional (RP) was appointed. RP filed an application seeking a 90 days extension of Personal Insolvency Resolution Process (PIRP) beyond 180 days on ground

that repayment plan had been received and same was under consideration of creditors. NCLT granted extension of 90 days extension, however, no views were expressed on moratorium. RP challenged NCLT's order on ground that Insolvency Resolution Process without Moratorium would render entire exercise of personal Resolution Process as futile thus, NCLT had erred in not extending moratorium beyond 180 days, which was set to expire on 28-10-2024.

Held that in view of express provisions of section 101(1) limiting moratorium period to 180 days on date when order is passed by NCLT for repayment plan, whichever is earlier, 180 days from commencement of moratorium comes to an end and moratorium also statutorily comes to an end

and could not be extended. Statutory scheme of section 101 is clear and unambiguous, there is no role of any interpretive process to find out jurisdiction of NCLT or NCLAT to extend period of Moratorium beyond statutorily prescribed period of 180 days, thus, no extension of moratorium could be

allowed.

Case Review : Mukund Chaudhary, In re [2025] 171 taxmann.com 287 (NCLT - New Delhi), affirmed

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

Employees' Provident Fund v. Jaykumar Pesumal Arlani, Resolution Professional of Decent Laminates (P.) Ltd. [2025] 171 taxmann.com 522 (NCLAT- New Delhi)

Where appellant/EPFO filed claim with respect to PF dues payable on basis of assessment under section 7A of EPF & MP Act, 1952, which was made subsequent to initiation of moratorium, said claim was hit by section 14(1).

CIRP was initiated against the corporate debtor. Appellant-EPFO had initiated proceedings under section 7A of the EPF & MP Act, 1952 with respect to PF dues payable. Subsequently, assessment orders under section 7A, 14B and 7Q were passed against the corporate debtor. The appellant had filed application before NCLT seeking direction to RP to admit total claim of PF dues. NCLT by impugned order had rejected said application on ground that IBC was a time bound process and claim, which had

been submitted by the appellant at a belated stage, after approval of resolution plan was rightly rejected by RP.

Held that after initiation of moratorium under section 14, no assessment proceedings can be continued by EPFO and if after an order of liquidation was passed, section 33(5), does not prohibit initiation or continuation of assessment proceedings. Claim were filed on basis of assessment, which had been made subsequent to initiation of moratorium, said claim was hit by section 14, sub-section (1) and no such claim could be admitted in CIRP, therefore, impugned order passed by NCLT was to be upheld.

Case Review : Assistant Provident Fund Commissioner v. Sanjay Kumar Lalit [2025] 171 taxmann.com 118 (NCLT - Mum.) and Assistant Provident Fund Commissioner (EPFO) v. Jaykumar Pesumal Arlani RP of Decent Laminates (P.) Ltd. [2025] 171 taxmann.com 366 (NCLT - AHD) affirmed.

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - SUPREME COURT, APPEAL TO

State Bank of India, Assistant Manager v. India Power Corporation Ltd. [2025] 171 taxmann.com 600 (SC)

Where in insolvency proceedings initiated by SBI against respondent NCLT condoned delay in filing rejoinder affidavit but ruled that factual assertions in rejoinder affidavit would not be considered while deciding section 7 application and said order was upheld by

NCLAT, order of NCLAT was to be set aside and matter was to be remitted to NCLT for fresh adjudication of section 7 application.

SBI initiated insolvency proceedings against the respondent (IPCL) under Section 7 before NCLT. SBI filed its rejoinder affidavit, but with a delay, citing a pending money suit filed by IPCL. An application was filed for condonation of delay. NCLT condoned delay but ruled that factual assertions in rejoinder

affidavit would not be considered while deciding section 7 application. SBI challenged said order, but NCLAT dismissed appeal.

Held that NCLT permitted Bank to file their rejoinder after condoning delay, it was too much for NCLT to say that Bank shall not be permitted to rely on any assertions made in rejoinder. NCLT and NCLAT erred in

disallowing rejoinder affidavit despite condoning delay. Order of NCLAT was to be set aside and matter was to be remitted to NCLT for fresh adjudication of section 7 application.

Case Review : Order of NCLAT, Chennai in CAAT (CH)(I) No. 87/2023, dated 4-10-2023 (para 12) set aside.

SECTION 29A - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

Fortune Chemicals Ltd. v. Ashok Kumar Jaiswal, Resolution Professional of Aarya Industrial Products (P.) Ltd. [2025] 171 taxmann.com 826 (NCLAT- New Delhi)

Where resolution plan submitted by appellant was rejected by RP on ground that appellant was ineligible under provisions of section 29A, and CoC, in its commercial wisdom, had not accepted resolution plan and had directed liquidation of corporate debtor, there was no ground to interfere with order of NCLT rejecting application for consideration of resolution plan.

CIRP was initiated against the corporate debtor and, the appellant submitted a resolution plan, which was rejected by CoC, with decision to approve liquidation by a 100 per cent voting share. The appellant then filed application seeking direction on Resolution Professional (RP) to accept resolution plan of the appellant and to forward it to Committee of Creditors (CoC) for consideration. However, NCLT vide order rejected said application. It was noted that the appellant was ineligible under provisions of section 29A and RP informed

that one of directors of the appellant, who was a prospective resolution applicant, was also a director of a company that had failed to file its financial statements and annual returns for a continuous period of three years, thus, the appellant company was ineligible to be a resolution applicant in terms of provisions of clause (e) of section 29A.

Held that as per provisions of section 164 of Companies Act, 2013, no person who is or has been director of company that has not

filed financial statements and annual returns for any continuous period of three years shall be eligible to be reappointed as a director of same company or appointed as a director in any other company for period of five years from date on which said company continuously failed to file accounts of three years. Therefore, there was no ground to interfere with order of NCLT, and accordingly, appeal was to be dismissed.

Case Review : State Bank of India v. Aarya Industrial Products (P.) Ltd. [2025] 171 taxmann.com 711 (NCLT - Kolkata), affirmed.

HIGHLIGHTS OF THE MEDIATION COHORT TO BECOME A CERTIFIED MEDIATOR WITH COMPREHENSIVE INDUSTRY FOCUS (12TH - 19TH APRIL 2025)





Workshop For Insolvency Professionals (Challenges Faced by Insolvency Professional in Implementation of Resolution Plan) in Association with The Chandigarh Chapter of ICAI (30th APRIL 2025)



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- ✓ The length of the article should be 2500-3000 words.
- ✓ The article should also have an executive summary of around 100 words.
- ✓ The article should contain headings, which should be clear, short, catchy, and interesting.
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